

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: WESTERN MINNESOTA MUNICIPAL POWER AGENCY	DOCKET NO. WRU-03-19
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PROPOSED DECISION AND ORDER

(Issued August 20, 2003)

APPEARANCES:

MR. MICHAEL R. MAY, Attorney at Law, 1216 East Franklin, Indianola, Iowa 50125 and MS. MRG SIMON, Attorney at Law, Missouri River Energy Services, appearing on behalf of Western Minnesota Municipal Power Agency.

MR. BEN STEAD, Attorney at Law, 310 Maple Street, Des Moines, Iowa 50319 - 0063, appearing on behalf of the Consumer Advocate Division of the Iowa Department of Justice.

MR. NEIL and MRS. LAVONNE SCHROETER, 3407 Jay Avenue, Brayton, Iowa 50042, appearing pro se.

MR. TREVOR SCHROETER, 1201 N. Dakota #4, Ames, Iowa 50014, appearing pro se.

MR. JOHN W. and MRS. LUCILLE M. NELSON, 3476 Jay Avenue, Brayton, Iowa 50042-7526, appearing pro se.

STATEMENT OF THE CASE

On April 18, 2003, the Western Minnesota Municipal Power Agency (Western Minnesota) filed with the Utilities Board (Board) an application for waiver of the generating certificate requirements of Iowa Code Chapter 476A, Subchapter I (2003) and Exhibits A, B, and C. Western Minnesota proposes to construct a 90 megawatt

(MW) electric generating facility for peaking purposes in Audubon County near the communities of Exira and Brayton, Iowa. Western Minnesota supplies power, energy, and transmission capability to the Missouri Basin Municipal Power Agency d/b/a Missouri River Energy Services (MRES) pursuant to a power supply contract. MRES is comprised of 57 municipally owned electric utilities in the states of Iowa, Minnesota, North Dakota, and South Dakota. MRES will purchase the entire electric output of the proposed peaking facility to supply the electricity needs of its member municipal utilities and their customers. (Tr. 20 – 22).

Mr. Neil and Mrs. Lavonne Schroeter filed objections to the proposed facility and the request for a waiver on April 28, May 2, May 14, June 3, and June 11, 2003. Mr. John and Mrs. Lucille Nelson filed objections to the proposed facility and the request for a waiver on April 28, May 7, May 8, and June 13, 2003. Mr. Trevor Schroeter, the son of the Schroeters and grandson of the Nelsons, filed an objection on June 13, 2003. (Tr. 180) The Schroeters and the Nelsons live near Brayton, Iowa. The proposed facility borders farm land owned by these families.

On May 7, 2003, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a response to the waiver request. The Consumer Advocate stated it did not oppose the Board granting the application for a waiver. It recommended the Board condition approval of the waiver upon Western Minnesota's commitment to successfully negotiate with affected transmission owners resolution of minor impacts on the transmission system as discussed in the waiver application.

On June 30, 2003, the Board issued an order granting a request by Western Minnesota to begin advance site preparation and assigning this proceeding to the undersigned administrative law judge to conduct a hearing and issue a proposed decision. On July 2, 2003, the undersigned issued a notice of hearing setting the hearing for July 22, 2003.

The hearing in this case was held on July 22, 2003, in the Board hearing room, 350 Maple Street, Des Moines, Iowa. Western Minnesota was present and represented by counsel. Mr. William Radio, Mr. Ray Wahle, Mr. Terry Wolf, Mr. DeWayne Keegel, and Mr. Gary Sandholm testified on behalf of Western Minnesota. The Consumer Advocate was present and represented by its counsel. The Schroeters were present and represented themselves. Mrs. Lavonne Schroeter and Mr. Trevor Schroeter testified on behalf of the Schroeters. The Nelsons have health issues and were not able to attend the hearing. (Tr. 197). Their daughter, Mrs. Schroeter, testified on their behalf. (Tr. 195). Mrs. Schroeter has power of attorney for the Nelsons. (Tr. 198). Western Minnesota's Exhibits 1–55 were admitted at the hearing. The Schroeters' Exhibits 101–115 were also admitted at the hearing.

DISCUSSION OF THE EVIDENCE AND ANALYSIS

I. Background

Western Minnesota proposes to build a 90 MW peaking electric generating facility in a rural area near the communities of Exira and Brayton, Iowa. (Exhibits 6, 13, 33, 41; Tr. 22). Interstate 80 is approximately one mile south of the proposed facility. (Exhibits 13, 33). The proposed facility will consist of two simple-cycle

combustion turbines, each rated at 47.658 MW at standard conditions while firing natural gas. (Tr. 143; Exhibits 6, 33, 35, 39, 40). The turbines will use natural gas as a fuel with diesel (No. 2 fuel oil) as a backup fuel. (Exhibits 6, 33). It is estimated each turbine will operate about 1500 hours per year, although much of the time the turbines will run concurrently. (Tr. 132–34, 144, 150-51; Exhibits 33, 35). The turbines may be operated less than this. (Tr. 144). Due to federal Department of Energy environmental requirements, MRES agreed to limit the yearly electric output to less than 50 average MW. (Exhibits 33, 35). If MRES wishes to expand the output beyond this limit, it must pursue completion of an Environmental Impact Statement (EIS) to evaluate operation of the plant above the 50 average MW limit. (Exhibits 33, 35).

The proposed facility will be constructed on a 76-acre plot, with a footprint of approximately seven acres, and will include two fuel tanks, one raw water tank, two polished water tanks, an electrical building, a mechanical building, chillers, two cooling towers, an electric switchyard, a natural gas interconnection facility, and a 2000-foot interconnecting 161 kV transmission line. (Exhibits A, B, C, 6, 14, 33, 39, 40, 41; Tr. 34). The proposed facility will interconnect with an existing Western Area Power Administration (WAPA) 161 kV transmission line that crosses the northeast corner of the 76-acre site. (Exhibits 6, 33, 35). WAPA will own and operate the switchyard and transmission interconnection. (Exhibits 6, 33, and 35). WAPA will also construct a new substation adjacent to the proposed facility. (Exhibits 33, 35). The proposed facility also will interconnect on site with an existing Northern Natural

Gas pipeline that crosses the site. (Exhibits 6, 33, and 35). Water supply will be provided by groundwater wells to be constructed on the site. (Exhibits 6, 33, 35, and 42).

Mr. and Mrs. Nelson own farms immediately to the north and south of the proposed plant site. (Tr. 189–91; Exhibit 14). The two farms combined have approximately 270 acres, with the north farm having approximately 80 acres and the south farm the remaining acres. (Tr. 189–91). The Nelsons live on the south farm. The Schroeters live on the north farm and own approximately two acres surrounding their house. (Tr. 189–91). The proposed plant will be approximately 1900 feet from the Schroeter residence. (Tr. 267, 275; Exhibits 14, 33). At its closest point, the access road to the proposed plant will be approximately 1275 feet from the Schroeter residence. (Tr. 276; Exhibit 14). The Nelsons' and the Schroeters' electricity is supplied by Farmers Electric Cooperative, so their electric needs will not be supplied by the proposed plant. (Tr. 217).

II. Meaning of an Iowa Code § 476A.15 waiver

In their written objections and hearing testimony, the Schroeters and the Nelsons (collectively, the objectors) appear to have some misunderstanding of what the grant of a waiver in this case would mean. (Tr. 207–11, 222–23; written objections) Therefore, a clarification of the effect of a waiver in this case appears to be appropriate.

Since it applied for a waiver pursuant to Iowa Code § 476A.15, Western Minnesota had to submit sufficient evidence to show the project meets each of the

criteria for grant of a waiver and the criteria for the grant of a generating certificate.

In re: Roquette America, Inc., Docket No. WRU-02-44-3676, "Order Granting Waiver and Approving Settlement" (Issued December 26, 2002) (Roquette Order); In Re: Corn Belt Power Cooperative and Basin Electric Power Cooperative, Docket No. WRU-01-30-917, "Order Granting Waiver" (Issued July 13, 2001) (Corn Belt Order). Evaluation of these criteria is discussed below. When the Board considers the request for such a waiver, it evaluates the same criteria it would if Western Minnesota had applied for a generating certificate, as well as criteria applicable to whether a waiver should be granted in its consideration of whether the public interest would be adversely affected by the waiver. Iowa Code §§ 476A.6 and 476A.15; 199 IAC 1.9; Roquette Order; Corn Belt Order.

The grant of a waiver to Western Minnesota would mean that Western Minnesota does not have to comply with some of the procedural steps required for the grant of a generating certificate in Iowa Code Chapter 476A and the Board rules at 199 IAC Chapter 24, it could construct the plant without a generating certificate, and it would not receive a generating certificate. Iowa Code Chapter 476A; 199 IAC Chapter 24; Roquette Order; Corn Belt Order.

Granting a waiver does not mean Western Minnesota may build what it wishes without regard to applicable law. Even if granted a waiver, although it would not receive a generating certificate, Western Minnesota would still have to comply with the laws that apply to its electric generating facility. Roquette Order; Corn Belt Order. These include, but are not limited to, the statutes, rules, and orders of the Board, the

environmental laws administered by various federal agencies and the Iowa Department of Natural Resources, and any applicable local zoning or other land use restrictions. (See Exhibits 33–46). Iowa Code Chapter 476A, Subchapter I; 199 IAC 1.9; Roquette Order; Corn Belt Order.

Grant of a waiver does not mean Western Minnesota may significantly alter the plant without seeking approval from the Board and other regulatory agencies. (Tr. 57; Exhibits 35, 39). Iowa Code § 476A.2. Granting a waiver would not exempt Western Minnesota from this or any other statutory requirement with respect to its future activities. Roquette Order. Western Minnesota witness Mr. Radio acknowledged in testimony that if the company decided to expand above the current 90 MW in the future, it would have to return to the Board, Iowa Department of Natural Resources, and other regulatory bodies and seek regulatory approval. (Tr. 23, 258). Western Minnesota witness Mr. Wahle testified the company has no plans to expand at this time, and if it did plan to expand, it would have to seek regulatory approval. (Tr. 57-8).

III. Notice and opportunity to object issue

Mrs. Schroeter raised an issue regarding appropriate notice in Iowa Code § 476A.15 waiver cases that the undersigned administrative law judge recommends the Board consider in a separate proceeding such as a rulemaking. (Tr. 209–11, 222–23). If an applicant files an application for a generating certificate, a contested case public hearing conducted by the Board in the county of the proposed plant with prior notice to the public is required. Iowa Code § 476A.4. The notice must be

served on certain listed persons and published in the county for two consecutive weeks, with the second publication being at least twenty days prior to the hearing. § 476A.4(3). However, in this case, as in the § 476A.15 waiver cases held since the statute was amended, the Board has not required notice to the public, including notice that objections may be filed with the Board, or a public meeting or hearing. Mrs. Schroeter testified they only found out an objection could be filed with the Board by accident. (Tr. 206–07). She testified that the Nelsons went to a public meeting held by MidAmerican Energy Company regarding a proposed transmission line unrelated to this case, and the participants were given forms they could file with the Board if they objected to the proposed line. (Tr. 206–07) Mrs. Schroeter testified if Mrs. Nelson had not attended the public meeting, they would not have known they could object and no objections to this proposed plant would have been filed. (Tr. 207).

She also testified they learned of the proposed project when the Nelsons were approached by a land broker requesting to purchase an option on the Nelson's north farm, and giving them two days to respond.¹ (Tr. 198–200, 205, 248). The Nelsons were not given the name of a contact person or a utility they could call with questions. (Tr. 198–202). Mrs. Schroeter discovered whom to contact through multiple telephone calls and the assistance of an employee of the WAPA. (Tr. 201–03; Exhibit 108).

¹ Once the Schroeters told Mr. Radio they were upset with the land broker, Western Minnesota took the land broker off the case. (Tr. 205, 228 – 229) Mr. Radio has been the primary point of contact with the Nelsons and the Schroeters for Western Minnesota and MRES. (Tr. 227)

Western Minnesota issued its first news release about the project on March 27, 2003, announcing it had selected a preferred site for the proposed plant in Exira Township. (Tr. 24-5). Mr. Radio testified people were hearing things and they wanted the public to know Western Minnesota was looking seriously at the community. (Tr. 24–5). Western Minnesota held a public announcement in the city of Audubon on March 31, 2003, with over 30 people in attendance. (Tr. 25, 227). It issued a second news release telling people it had hired engineers to design the plant and they were continuing to move forward at the site. (Tr. 25). These were the only public announcements given as of the date of the hearing. (Tr. 26, 249- 50).

If the Schroeters and the Nelsons have a concern, Mr. Radio listens and attempts to provide answers to them. (Tr. 204, 228–31, 247–48) However, the company has not volunteered information, and Mrs. Schroeter has had to ask for it. (Tr. 220). The Schroeters learned a lot of information about the proposed plant for the first time at the hearing. (Tr. 203–04, 231–32)

However, this situation, although unfortunate and upsetting to the Nelsons and the Schroeters, does not provide a reason to deny the request for a waiver. The Schroeters and Nelsons were able to file written objections to the waiver request, a hearing was held, the Schroeters attended the hearing and testified, the Nelsons were given notice of the hearing and had an opportunity to attend if they wished, and Western Minnesota did not violate required procedures in § 476A.15 waiver cases as they currently exist.

IV. Whether the application for a waiver should be granted

When evaluating whether the application for a waiver filed by Western Minnesota should be granted, the main issue is whether the public interest would be adversely affected by the grant of a waiver of the certification requirements contained in Iowa Code Chapter 476A. Iowa Code § 476A.15. In the context of this statute, the public interest means the interest of all the public. It does not mean only the interest of one group of the public, such as the Nelsons and the Schroeters. However, the Nelsons and the Schroeters are part of the public whose interest must be considered, so their concerns will be considered along with the larger public interest in the evaluation of whether to grant the application for a waiver.

In determining whether the public interest would be adversely affected, the Board considers several factors listed in 199 IAC 24.15. The first factor is the purpose of the proposed facility. 199 IAC 24.15(1).

MRES has obligations under its power sales contracts (the S-1 contract) with its 57 member municipal electric utilities to provide them electric service and to plan for their future energy needs. (Tr. 28, 34). To accomplish this, each year MRES does a forecast to monitor its members' electric consumption and what plants it might have to add to meet its members' ongoing electric needs. (Tr. 34–35, 66-67). According to the S-1 contract and its MidContinent Area Power Pool (MAPP) requirement, MRES must meet its members' peak load plus a 15 percent reserve obligation. (Tr. 35). In 2002, Western Minnesota and MRES determined it would

need additional power by 2004 to meet these requirements, and considered options to meet this need. (Tr. 35, 54-56; Exhibit 11).

Since MRES is a not-for-profit organization, its objective is to find the lowest cost power supply to meet its members' needs. (Tr. 35). MRES studied both building options and purchasing options. (Tr. 36; Exhibits 9, 12). MRES hired a consultant to do a generation siting study, and this study identified four potential sites for a new power plant. (Tr. 36, 61; Exhibit 9). MRES studied transmission at the four potential sites and various types of plants at the various locations. (Tr. 36-37; Exhibits 9, 20). MRES determined that for its members' particular load shape, the most cost-effective option would be to build a simple cycle combustion turbine. (Tr. 36-37, 62; Exhibits 9, 20).

Each of the four potential sites MRES studied had problems. (Tr. 37-39). One site looked very good from a transmission perspective, but it did not have a good gas supply. (Tr. 38-39). Since the major cost components for a gas-fired combustion turbine are the transmission costs and the gas costs, MRES wanted to minimize those costs by minimizing the amount of transmission line and gas pipeline it had to build. (Tr. 46). MRES then looked down the transmission line to see where a major gas line crossed the transmission line, and identified several potential sites. (Tr. 39, 47, 61-63). It obtained an option to purchase on its first choice site. (Tr. 47, 63). The site was its first choice because the property has a transmission line and four gas pipelines on the property. (Tr. 47-50; Exhibit 13). The plant and associated switchyard will be able to be built entirely within the boundaries of the property.

(Tr. 48–49, 68). The company's board of directors selected the site as its preferred site on March 26, 2003. (Tr. 63–64; Exhibit 16).

Mrs. Schroeter questioned why Western Minnesota did not construct the plant on a site approximately one mile north of their property. (Tr. 217–18) Western Minnesota witnesses testified this property is further away from the intersection of the transmission line and gas lines, which would increase the complexity and cost of the project. (Tr. 256, 269–73, 278–79).

The proposed facility will supply power to 55 of MRES' member municipal utilities located in Iowa, Minnesota, North Dakota and South Dakota. (Exhibits 3, 6; Tr. 20–22, 27-29). Approximately 44,300 Iowa customers will be served. (Tr. 21, 28). The plant will be a peaking unit whose primary purpose is to meet the members' energy needs at those times when Western Minnesota's other facilities are insufficient. (Tr. 235). Mr. Radio testified this would be for a few weeks in the summer and possibly the winter when there is not enough capacity from Western Minnesota's other resources, and market prices are such that it would be cheaper to operate the plant than purchase power. (Tr. 235).

The second factor to be considered is the type of facility. 199 IAC 24.25(2). The proposed facility is a 90 MW electric generating peaking facility consisting of two simple-cycle combustion turbines rated approximately 45 MW each that will be fueled primarily by natural gas with diesel (No. 2 fuel oil) as a backup fuel. (Exhibit 6; Tr. 33–34, 143).

The third factor to be considered is whether the facility is for the applicant's own needs. 199 IAC 24.15(3). Western Minnesota was created to secure adequate, economical, and reliable electric energy and transmission facilities for the members of MRES, including the financing that Western Minnesota performs as part of its ownership role. (Tr. 20–21). MRES's 57 utility members include 18 Iowa municipal electric utilities, with a total Iowa population of approximately 44, 300. (Tr. 21). MRES uses Western Minnesota's generation and transmission facilities to serve its member municipal utilities, including those in Iowa. (Tr. 21). Western Minnesota relies on MRES staff for all its management and operation functions. (Tr. 21). Western Minnesota has no staff separate and apart from MRES. (Tr. 21). Western Minnesota and MRES are not-for-profit, joint action agencies. (Tr. 21). Both are owned by the not-for-profit member municipal electric utilities they serve. (Tr. 21-22). Western Minnesota plans to finance and construct the proposed facility. (Exhibit 6). MRES will purchase the entire output of the facility and operate it to supply the power needs of its member municipal utilities. (Exhibit 6; Tr. 22). MRES buys and sells power routinely, and if it has excess power and can sell it at a price above cost, it will sell power to another company. (Tr. 40). It may do this on a short-term basis, but has no plans to enter into a long-term contract with any other power company, other than its members. (Tr. 40).

The fourth factor to be considered is the effect of the facility on existing transmission systems. 199 IAC 24.15(4). The MAPP Design Review Subcommittee approved the transmission system impact study for the proposed facility. (Tr. 72–74,

77–82; Exhibits 23-31) The only impact to the transmission system requiring mitigation was on a transmission line from Fort Dodge to Boone Junction. (Tr. 75; Exhibits 23-31). Eight H-frame structures on the line need to be raised in the 2007 to 2012 time frame. (Tr. 75–76; Exhibits 23-31) MRES executed letter agreements with MidAmerican Energy Company (MidAmerican) and Central Iowa Power Cooperative (CIPCO) on July 24, 2003, to perform the required work. (Letter Agreements filed July 31, 2003; Tr. 76–77, 85-86; Exhibits 24 and 25) The letter agreements were filed with the Board on July 31, 2003. If the work is completed as specified in the letter agreements, there should be no adverse impact on the transmission system from operation of the proposed facility. (Tr. 83-85; Exhibits 23–31)

The last factor in rule 24.15 is a consideration of any other relevant factors. 199 IAC 24.15(5). In their written objections and hearing testimony, the Nelsons and the Schroeters raised a number of concerns, including safety, health, water usage, noise, loss of hunting rights, loss of quality of life, devaluation of their properties, and decline of wildlife. (Tr. 212; written objections). They are also concerned about the noise from construction equipment. (Tr. 220–21). The concerns related to the notice and opportunity to object were discussed above. The remaining concerns are generally related to the land use and environmental decision criteria for a generating certificate, and will be discussed below.

In addition to the factors contained in 199 IAC 24.15, the board considers whether the application for a waiver adequately addresses the decision criteria for a generating certificate contained in Iowa Code § 476A.6. In re: Roquette America,

Inc., Docket No. WRU-02-44-3676, "Order Granting Waiver and Approving Settlement" (Issued December 26, 2002); In Re: Corn Belt Power Cooperative and Basin Electric Power Cooperative, Docket No. WRU-01-30-917, "Order Granting Waiver" (Issued July 13, 2001). There are three decision criteria for a generating certificate in Iowa Code § 476A.6. The first is whether the services and operations resulting from the construction of the facility are: a) consistent with the legislative intent expressed in Iowa Code § 476.53 to attract the development of electric power generating facilities within the state in sufficient quantity to ensure reliable electric service to Iowa consumers and the economic development policy of the state; and b) not detrimental to the provision of adequate and reliable electric service. Iowa Code § 476A.6(1). Western Minnesota's proposed facility is consistent with the legislative intent expressed in Iowa Code § 476.53 to attract development of sufficient electric generation in Iowa to ensure reliable service to Iowa customers. (Tr. 91–92) The facility will enhance the provision of adequate and reliable electric service. As discussed above, operation of the facility will not adversely impact the transmission system and MRES has executed letter agreements with MidAmerican and CIPCO Cooperative to mitigate the two minor constraints on the transmission system identified by the MAPP Design Review Subcommittee. (Tr. 83-84; Exhibits 23–31).

The proposed facility will support economic development by paying taxes, creating jobs, and improving the energy infrastructure. Western Minnesota will pay local option sales tax on the construction of approximately a half million dollars. (Tr. 156) The county will also receive electrical generation tax and natural gas

delivery tax paid on gas consumed by the plant. (Tr. 156). Western Minnesota witness Mr. Sandholm estimated the county would receive between \$25,000 and \$30,000 per year through the electric generation tax. (Tr. 157). If the plant operates 500 hours per year, the county will receive electric generation tax revenue of approximately \$29,000 per year. (Tr. 157, 160) He estimated the county would receive natural gas delivery tax revenue of approximately \$4,000 per year based on 500 hours of generation. (Tr. 158-160). Tax revenues increase the more the plant operates. (Tr. 158–159). Mr. Sandholm estimated that the additional cost to the county for increased fire protection and law enforcement would be minimal. (Tr. 161). MRES will be responsible to pay for any damage to the road during construction, and there will be an increase of only two or three cars per day on the road after construction, so there will be no appreciable impact on the cost of road maintenance. (Tr. 161–63; Exhibit 50).

During construction, there will be approximately 150 people working at the plant at various times. (Tr. 164). Many of them will be from outside the area, and so will spend money on lodging, meals, and other local services. (Tr. 164–65, 173-74).

After the facility is constructed, to the best of its knowledge, Western Minnesota will employ one or two individuals at the plant and WAPA, who will be the owner of the switch station, will employ one person at the site. (Tr. 59, 262). Western Minnesota expects the employees will work a 7-to-4 or 8-to-5 schedule Monday through Friday. (Tr. 262). The employees may occasionally be at the plant for maintenance or other reasons. (Tr. 262–63)

The second decision criteria is whether the applicant is willing to construct, maintain, and operate the facility pursuant to the provisions of the certificate and Chapter 476A, Subchapter I. Although Western Minnesota will not receive a generating certificate, it is still subject to the statutory requirements regardless of whether an actual certificate is issued. Roquette Order. As discussed above, granting the waiver will not exempt Western Minnesota from any statutory or other requirement with respect to its future activities. Western Minnesota witness Mr. Radio testified that Western Minnesota and MRES will construct, maintain, and operate the facility according to the requirements of Iowa Code Chapter 476A. (Tr. 23).

The third decision criteria is whether the construction, maintenance, and operation of the facility will be consistent with reasonable land use and environmental policies and in harmony with reasonable use of air, land, and water resources, considering available technology and the economics of available alternatives. Iowa Code §§ 476.53, 476A.6.

Western Minnesota has obtained all required environmental permits necessary at this time, including an air construction permit, and will apply for the two remaining permits, an air operating permit and an acid rain permit, once the plant is operational and they are required. (Tr. 110–16, 140–41, 149; Exhibits 37-44). The Board has traditionally deferred to the IDNR's expertise with respect to environmental issues and has found this criterion satisfied if IDNR issues the appropriate permits.

Roquette Order, Corn Belt Order.

In addition, WAPA of the Federal Department of Energy assessed the environmental effects of constructing and operating the proposed facility, associated switchyard and access roads, and the electrical, natural gas and communications interconnections required for the project. (Tr. 92–101; Exhibit 33). Based on this environmental assessment, on July 18, 2003, WAPA issued a Finding of No Significant Impact. (Tr. 94; Exhibit 35). WAPA determined there were only two mitigation measures needed to reduce the potential for a significant environmental impact: a) protection of the Henslow sparrow, an Iowa endangered species; and b) protection of neighboring groundwater wells from impacts associated with use of groundwater by the proposed facility. (Tr. 95–98; Exhibits 33, 35). Mitigation measures to address these issues were identified in the environmental assessment, and MRES proposed additional mitigation to reduce impacts associated with plant construction and operation. (Exhibit 33). In response to a comment on the environmental assessment, MRES agreed with the Audubon County Engineer that if there were dust issues or needed maintenance on the road, it would come at the expense of Western Minnesota. (Tr. 99–100; 119). MRES will implement the mitigation measures, coordinate with government agencies regarding the measures, and a WAPA staff member will verify mitigation results and determine if the measures achieved their intended purpose. (Tr. 93–101; Exhibits 33, 35). With the mitigation measures, WAPA found that the proposed facility is not a major federal action significantly affecting the quality of the human environment. (Tr. 101; Exhibit 35).

MRES has obtained a local building permit, authorization to construct a septic system, and obtained the right to install an access point to Jay Avenue.

(Tr. 116-118)

The objectors are concerned about air emissions from the plant and a number of other environmental concerns and whether there would be adverse impact to them. (Tr. 213–15; written objections). As discussed above, MRES has obtained an air construction permit for the proposed plant from IDNR, and the Board defers to IDNR's expertise with regard to environmental matters.

The Nelsons and the Schroeters are concerned about the noise level of the proposed plant. (Tr. 216; written objections). In its environmental assessment, WAPA studied the level of noise from the construction and operation of the facility in the surrounding area and at the nearest neighboring houses. (Exhibits 33, 35). WAPA found that facility noise emissions would be significantly below Housing and Urban Development recommended criteria, would fully conform to EPA noise level guidelines, and therefore would not be significant. (Exhibits 33, 35; Tr. 103).

MRES hired an acoustics engineer to prepare an audio logical review of the site. (Tr. 102; Exhibit 36). MRES designed the plant to reduce noise, and specifically to ensure that the closest home receives no more than 47 decibels as a receptor. (Tr. 105-10; Exhibit 14). As a general rule, the decibel level from Interstate 80 at this home is between 55 and 58 decibels. (Tr. 126). The Schroeters' residence would receive a decibel level from the proposed plant between two and three decibels lower than the 47 received at the closest residence. (Tr. 126). At the proposed plant,

MRES will enclose the loudest components in sound containments to reduce the decibel level. (Tr. 109). Sound level of the combustion turbine will be 85 decibels at 15 feet. (Tr. 127). Approximately 400 feet from the plant, the maximum sound would be at the 81 to 83 decibel level with the plant fully functioning and running. (Tr. 109, 146).

Mr. Keegel testified the decibel level would vary between 40 and 49 at the pond on the north farm, and guessed it would be about 65 decibels at the property line nearest the proposed plant. (Tr. 129–30; Exhibit 36). He testified the noisiest component would be the gas pressure regulation valve, which will be in a sound-attenuated enclosure. (Tr. 130–31) He testified that normal conversation has a decibel level of approximately 55 dBA. (Tr. 131). Since the sound will be constant, it will not draw attention to itself, and should not be hugely intrusive, although he testified that perceived sound is subjective and it is very difficult to accurately represent what a person will hear. (Tr. 131–32) MRES expects the Schroeters will hear the plant operating closer to 1500 hours than 3000 hours, and the plant may operate significantly less than this. (Tr. 134, 144).

The Schroeters are concerned that the facility's use of water will negatively impact their well. (Tr. 218) Mrs. Schroeter testified the first day of the well testing performed by Western Minnesota, the Schroeters' water level went down a little over a foot, and it was two to three foot low at the time of the hearing. (Tr. 218). She also testified Mr. Radio assured them Western Minnesota would help them if they lost their water. (Tr. 218). This issue was addressed in the WAPA environmental

assessment, MRES has obtained well permits from the IDNR, and MRES will take mitigation measures to protect neighboring wells. (Tr. 112–14, 135-38; Exhibits 7, 33, 35, and 42).

The objectors were also concerned about lighting at the proposed facility. (Tr. 216; written objections). There will be no special lighting to mark the proposed facility structures for air traffic since no airports are nearby. (Exhibit 33). Security lighting will be in place, and MRES will minimize lighting impacts by designing the lighting so it does not illuminate the sky over the facility and by directing lighting at the primary equipment. (Tr. 263–64; Exhibit 33).

The final criterion also states the facility must be consistent with reasonable land use. Iowa Code § 476.6(3). Western Minnesota witness Mr. Keegel testified the site is 76 acres, of which they will use approximately four acres for the switching station, three acres for the power block, and five acres for fuel pressure regulation roads, access to the site, and access to the two discharge ponds. (Tr. 124). He testified that given 12 acres is the primary impact in this 76-acre site, location of an electric generating facility is very good use of the site considering the presence of existing natural gas pipelines and electric transmission lines on the land that will be owned by Western Minnesota. (Tr. 125; Exhibits 14, 33). Mr. Keegel testified he believed they had done a good job of optimizing the size of the facility and scaling it appropriately for the area they will own. (Tr. 125).

The Schroeters and the Nelsons object to the proposed facility because they believe it will negatively impact their quality of life. (Tr. 215–16; written objections).

Mrs. Schroeter testified they live in the middle of nowhere for a reason, and their sense of solitude and nature are more important to them than possessions and the size of their house. (Tr. 215).

The Nelsons and the Schroeters are concerned about surveillance cameras pointed on their property. (Tr. 215). Western Minnesota testified it would not have any surveillance cameras pointed at the Schroeters' and Nelsons' properties, and would only have cameras observing its own property for security reasons. (Tr. 234, 250–52, 265–66).

In addition to the environmental issues discussed above, the Schroeters are upset by hunting restrictions that have been placed on their property due to construction of the plant. (Written objections; Tr. 180–82, 212). IDNR rules state that hunting is not allowed within 200 yards of an occupied building except with the permission of the building owner. (Tr. 119–23; Exhibits 8, 45, 104). During the period of construction, the Schroeters and Nelsons will be restricted from hunting on two parcels of their land: areas that are within two hundred yards of the proposed facility buildings and marked in yellow on Exhibit 14. (Tr. 121–23, 142, 232–34; Exhibits 8, 14). Although Western Minnesota witness Mr. Keegel testified it was difficult to see where there is significant habitat in the two areas, the Schroeters testified these two areas include some of the family's favorite places to hunt. (Tr. 123, 180–81, 184–85, 213) The Schroeters testified deer and other wildlife will move off the property for quite some time and this will reduce the value of the land for hunting. (Tr. 181–83, 212). The Schroeters and Nelsons are able to hunt on the

remainder of their property. (Tr. 225). Once construction is completed, MRES stated it would reconsider its decision if the Schroeters requested it, although its current position is that it would not grant permission. (Tr. 139, 142–43, 258-59; Exhibit 8). The company is concerned with the safety of its workers. (Tr. 259). In addition, Mr. Keegel testified the company would have a \$50 million asset once the plant is constructed, and it would make sense to maintain the hunting restriction. (Tr. 138-139)

The Schroeters and Nelsons are concerned that Western Minnesota will expand operation of the plant in the future. (Tr. 216; written objections). Western Minnesota witness Mr. Wahle testified it would be too expensive to operate the plant 24 hours a day, seven days a week, because of the cost of natural gas. (Tr. 40–43; Exhibit 20). He also testified when Western Minnesota first looked at the site, they considered installing a combined cycle combustion turbine in the future, but determined it would not be economical to do so. (Tr. 43–4, 57; Exhibit 20). He further testified that, although the transmission studies have been approved for up to 140 MW of plant at the site, the company has no plans to install additional capacity at the site at this time. (Tr. 57–60, 65). This is a change from the company's original announcement in March 2003. (Tr. 58). Mr. Wahle testified that before the company would consider expansion at the site, it would do fairly detailed generation studies and additional transmission studies, and would not just focus on this site. (Tr. 59–60). He testified that if there were plans to expand, Western Minnesota would be required to come back to the Board for approval as well as obtaining other regulatory

approvals. (Tr. 57, 60). Mr. Radio also testified he could not imagine a scenario under which the proposed plant would be operated anywhere near 24 hours a day. (Tr. 234–35, 253–54).

The Nelsons and Schroeters are concerned that their property values would fall due to the close proximity of the proposed facility. (Tr. 218). Mrs. Schroeter also testified their future income would be affected because they could not lease or sell the land as hunting ground. (Tr. 213). Although property values are not one of the criteria considered by the Board in deciding whether to grant a waiver, Western Minnesota presented evidence that there would be no impact on the land itself, and a very minimal impact on the Schroeter residence. (Tr. 165–69; Exhibit 53). Western Minnesota witness Mr. Sandholm testified that if the Nelsons tried to sell the property as hunting property, there would be some impact because of the reduction in the amount of land available. (Tr. 172).

The Schroeters and the Nelsons are concerned that the road by their homes will be blocked by construction equipment. (Tr. 237, 259–60) During construction, Western Minnesota will give the objectors 24 hours' notice if heavy equipment will block the road by their houses for more than 30 minutes. (Tr. 237). Mr. Radio testified the road can accommodate large equipment without being blocked, and it is not clear to him that the road will ever be blocked. (Tr. 256–57; Ex. 54, 55). Site grading is expected to be completed by September 1, 2003. (Tr. 277). Western Minnesota hopes to have construction complete and the plant operational by May 2004. (Exhibit 17).

As discussed above, the Schroeters and the Nelsons will be affected by the construction, operation, and presence of the proposed facility, even though it will not encroach on their land. (Tr. 194, 240–42, 268–69, 277). However, when considering whether the public interest will be adversely affected by the grant of a waiver of the certification requirements in Iowa Code Chapter 476A, the interests of all the public must be considered, not just those of the Nelsons and the Schroeters. The proposed plant is necessary to meet the electric needs of Western Minnesota's members and their customers. The public interest of Western Minnesota's members and their customers in adequate and reliable electric service will be enhanced by the proposed facility. As discussed above, Western Minnesota has presented evidence that adequately addresses each of the criteria for a waiver and that shows the proposed facility meets the requirements for a generating certificate in Iowa Code Chapter 476A. Western Minnesota has worked with the objectors and made design changes to the plant to address their concerns. Short of not constructing the plant at all, which is what the Schroeters and the Nelsons would prefer, Western Minnesota's design and placement of the plant on the site minimizes the impact on the objectors as much as can be done. Although the objectors will be affected, particularly during construction of the facility, the public interest as a whole will not be detrimentally affected by the grant of a waiver for this facility.

The grant of a waiver is specifically conditioned on Western Minnesota's completing transmission mitigation as detailed in the letter agreements with MidAmerican and CIPCO. It is also conditioned on Western Minnesota's obtaining

final required permits, compliance with all statutory requirements, and following through with its commitments to design and place the plant to minimize impacts on the surrounding landowners, as discussed in this order.

FINDINGS OF FACT

1. When considered as a whole, the public interest will not be adversely affected by the grant of a waiver of the certification requirements in Iowa Code Chapter 476A for this facility.
2. Western Minnesota will design the plant and place it on the site to minimize the impact on surrounding landowners.
3. Western Minnesota has worked with the Schroeters and the Nelsons to try to address their concerns.
4. If the transmission mitigation work is completed as specified in the letter agreements filed with the Board on July 31, 2003, there should be no adverse impact on the transmission system from operation of the proposed facility.

CONCLUSIONS OF LAW

1. Western Minnesota has presented evidence that adequately addresses each of the factors in 199 IAC 24.15.
2. Western Minnesota has presented evidence that the proposed facility meets the criteria for a generating certificate contained in Iowa Code § 476A.6.

IT IS THEREFORE ORDERED:

1. Western Minnesota's request for a waiver of the Iowa Code Chapter 476A, Subchapter I, generating certificate requirements is granted as discussed in this order. This approval is subject to Western Minnesota's completion of mitigation of the minor impacts on the transmission system as required by the MAPP Design Review Subcommittee and detailed in the executed letter agreements filed with the Board on July 31, 2003, and on Western Minnesota's obtaining required permits, compliance with all statutory requirements, and following through with its commitments to design and place the plant to minimize impacts on the surrounding landowners.

2. This proposed decision and order will become the final order of the Board unless the Board moves to review it or a party files written notice of appeal with the Board within 15 days of its issuance. 199 IAC 7.8(2).

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 20th day of August, 2003.